UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP

and **Case 21-CA-224219**

NATIONAL UNION OF HEALTHCARE WORKERS

Molly Kagel, Esq. and Irma Hernandez, Esq., for the General Counsel.
Diamond M. Hicks, Esq., for the Respondents.

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. The charge was filed on July 23, 2018, and the complaint was issued on November 30, 2018. The complaint alleges Respondents[1] violated Sections 8(a)(5) and (1) by failing and/or refusing to provide information requested by the Charging Party Union. The complaint was subsequently amended at trial to acknowledge the Union's receipt of certain of the requested information which was at issue in the complaint, and to add an allegation of unreasonable delay in furnishing the Union with that information.

On April 1 and 2, 2019, I conducted a trial at the Board's Downtown Los Angeles, California Regional Office, at which all parties were afforded the opportunity to present their evidence. At trial, the parties entered into a stipulation of certain facts, and submitted a series of Joint Exhibits as part of that stipulation (Jt. Exh. 1).[2] After the trial, the General Counsel and Respondents filed timely briefs,[3] which I have read and considered.[4]

Upon consideration of the briefs, and the entire record, including the testimony of witnesses and my observation of their demeanor, I make the following

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[1] I will collectively refer to Respondents Kaiser Foundation Hospitals and Southern California Permanente Medical Group as "Respondents" except where necessary to differentiate those two entities.
[2] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "GC Exh." for the General Counsel's exhibits, "R. Exh." for Respondents' Exhibits, and "Jt. Exh." for Joint Exhibits. Specific citations to the transcript and exhibits are included only where appropriate to aid review, and are not necessarily exclusive or exhaustive.
[3] The Charging Party did not file a separate brief.
[4] On May 14, 2019, the General Counsel also filed an unopposed motion to correct the transcript. The motion is granted and received into evidence as GC Exh. 1(s).

FINDINGS OF FACT

I. JURISDICTION

Respondent Southern California Permanente Medical Group admits, and I find, that it is a California professional partnership, and has been engaged in the business of providing medical services to health plan members and operating health care clinics. Respondent Kaiser Foundation Hospitals admits, and I find, that it is a California nonprofit public benefit corporation engaged in the operation of various health care facilities in California, Oregon and Hawaii.

Respondents admit, and I find, that together, along with Kaiser Foundation Health Plan, Inc., a nonprofit health maintenance organization not party to this matter, they provide health care services to members and others at various locations and facilities in Southern California, including a facility named Orchard Medical Offices, located at 9449 Imperial Highway, Downey, California.

Respondents further admit, and I find, that in conducting these business operations during the most recent 12-month period, they each derived gross revenues in excess of $250,000 and purchased and received at their Southern California facilities goods valued in excess of $5,000 directly from points outside the state of California.

Therefore, I find that Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondents admit, and I further find, that James Czaja is an agent of Respondents within the meaning of Section 2(13) of the Act. It is undisputed, and I also find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Background

Respondents provide health care services throughout the Southern California area, including mental health services. Approximately 1750 of its employees, including licensed clinical social workers, licensed marriage and family therapists, and approximately 125 Psychiatric Registered Nurses ("RNs"), make up what is known as Respondents' Psych Social Chapter Unit. The Psych Social Chapter Unit employees are represented for purposes of collective bargaining by National Union of Healthcare Workers (herein "the Union"), and have been recognized as such by Respondents since at least February 3, 2010.

Respondents and the Union are parties to a collective bargaining agreement ("CBA"), which by its terms has been in effect since December 17, 2015, running through September 30, 2018, and continuing from year to year thereafter unless amended, modified, changed or terminated. (Jt. Exh. 1-1). It is undisputed that Respondents are bound by this CBA.

The Underlying Grievance

Respondents maintain a License, Certificate, and Registration Verification Policy NATL.HR.010 (hereinafter, "the Policy") (Jt. Exh. 1(4)), which governs the licensing and licensing renewal rules and requirements applicable to Respondents' employees, including

those in the Union as well as those represented by other unions or not represented. Relevant provisions of the Policy include:

1.0 Policy Statement:

When licenses, certificates, and/or registrations (LCR)s are required by law, accreditation standards, or Kaiser Permanente (KP) Policy, it is the employee's responsibility to ensure that the LCRs are valid and current. KP does not permit employees to work without required LCRs.

2.0 Purpose:

The purpose of the policy is to ensure that employees maintain all job-required licenses, certifications, and registrations.

Provision 3.0 of the Policy and its sub-provisions lay out the scope of the policy to apply to employees at a list of Kaiser Permanente entities, including both Respondents. Provision 4.0 and its sub-provisions provide definitions of acceptable documentation required for licensing and certification.

Provision 5.0 and its sub-provisions set forth the substance of the Policy, including the responsibilities required of employees (5.1) and the expectations of managers in dealing with employees' license expiration and renewal (5.3):

5.1 Employee Responsibilities

5.1.1 Each employee is responsible for:

5.1.1.1 obtaining and maintaining LCRs in good-standing;

5.1.1.2 practicing within his/her scope of practice as defined by the law and professional standards, which may be narrower if so defined by KP policy [NOTE: In the National Labor Management Partnership Agreement, the parties agreed to issue resolution to address concerns of limitations to scope of practice by KP policy];

5.1.1.3 keeping abreast of issues and developments within his/her profession that may result in changes in LCR requirements;

5.1.1.4 meeting new requirements to ensure LCRs are current and valid;

5.1.1.5 immediately notifying KP if any LCR is revoked, suspended, restricted, limited, expired or not renewed; and

5.1.1.6 using the same identical name that is on his/her Social Security card for his/her LCR, all documentation pertaining to his/her clinical practice and work, and the name used in KP systems that determine his/her pay and benefits. If the names indicated on the documentation are not an exact match, the employee must be able to provide information so KP can verify with reasonable certainty that the names refer to that employee.

5.1.2 KP may provide courtesy notifications to employees to remind them of these responsibilities. However, employees should not rely solely on this

notification before taking appropriate steps to ensure their LCRs remain valid and do not expire.

5.3 Expiration of LCRs

5.3.1 In some regions, employees who have LCRs that are expiring receive a courtesy notification from KP before the expiration date. It remains an employee's responsibility to maintain current LCR. This notification is to serve as a reminder of his/her responsibility.

5.3.3 Should an employee who is not already on an approved leave permit his/her LCR to expire, even if application for renewal has been made, or if the LCR is suspended, the employee is placed on an unpaid leave or he/she will not be scheduled to work. If appropriate current documentation of the LCR is not obtained and presented within the region's/state's specified timeframe, the employee is terminated.

5.3.4 Any manager who knowingly permits an unlicensed person to work for him/her for any reason (including failure to obtain the initial LCR) after the date of expiration, suspension, or revocation of a LCR will be subject to corrective/disciplinary action, up to and including termination.

5.3.5 If a manager knowingly permits a person to work with a limited and/or restricted LCR, and the role requires an unlimited or unrestricted LCR, the manager will be subject to corrective/disciplinary action, up to and including termination.

Employee Tarina Marie worked as a psychiatric RN for Respondents as part of the Psych Social Chapter bargaining unit represented by the Union. On April 16, 2018, Marie was notified by Respondents that she was being terminated for working nine shifts with an expired nursing license, in violation of the Policy.

On April 17, 2018, the Union filed a grievance on behalf of Marie regarding her termination prepared by the Vice President of the Psych-Social bargaining unit, Mark Land-Ariizumi, who testified for the General Counsel.[5]

The Union's Information Requests

The grievance contained a Request for Information ("RFI") regarding Marie's termination, and was emailed to James P. Czaja, a human resources consultant with Kaiser Permanente Downey Medical Center. The RFI in the grievance form requested the following information at issue in this complaint:

1 - All corrective action cases involving NUHW members who have worked on an expired license

2 - All corrective action cases involving UNAC or other nursing union members who have worked on an expired license

[5] I found Land-Ariizumi to be a credible witness. His testimony was detailed and consistent, and his demeanor was at all times earnest and straightforward.

3 - Any corrective actions directly related to Tarina's case regarding management discipline
4 - All corrective action notes relating to Tarina Marie

Between April 17 and October 18, 2018[6], the Union and Respondents communicated exclusively via email regarding the Union's information requests. Land-Ariizumi and the Union's Lead Organizer, Ben Snyder,[7] communicated on behalf of the Union during these email discussions, while Czaja spoke on behalf of Respondents. Although the parties initially discussed scheduling a grievance meeting, on April 19 Snyder emailed Czaja stating the Union's position that its RFIs needed to be satisfied before any grievance meeting could be scheduled.

Czaja's response on April 20 asserted that he had begun work on the information request and hoped to have it completed by the following week. In an email exchange later on April 20, Czaja and Snyder agreed to hold the grievance meeting in abeyance pending completion of the Union's RFI.

After a further email exchange between Czaja and Land-Ariizumi from April 25-27 regarding information Marie had requested directly from her manager, on April 27 Snyder again asked Czaja for an expected date of completion for the RFI. Czaja emailed a response to both Land-Ariizumi and Snyder on May 1, but did not address Snyder's request for an expected completion date for the RFI.

On May 8, Czaja and Land-Ariizumi exchanged several emails regarding request #3 ("any corrective actions directly related to Tarina's case regarding management discipline") of the RFI. Czaja initially stated the request was "too vague to respond" and asked for clarification. Land-Ariizumi clarified the request to mean "any corrective/disciplinary action documentation for any managers related to this case," and Czaja again stated that he hoped to have the full response to the RFI by early the following week.

Fourteen days later, on May 22, Czaja provided Respondents' official response to the RFI. For request #1 regarding all NUHW member corrective action cases involving working with an expired license, the response indicated that the employer "does not maintain its records in such a fashion as to be able to respond to this request." For request #2, the response also objected to the necessity and relevance of all corrective action cases involving UNAC or other nursing union members working on an expired license, and stated that the Union did not have the right to "view the private disciplinary files of employees who are not represented by NUHW."[8]

For request #3 regarding corrective/disciplinary action documentation for any managers related to this case, Respondents asserted that such information was not necessary or relevant and objected on the basis of privacy and confidentiality. For request #4 for all corrective action notes relating to Marie, Respondents provided the Corrective Action Level V document created from the investigatory meeting prior to Marie's termination.

[6] All dates of communications between the parties related to the information requests at issue are in 2018.
[7] I found Snyder to be a very credible witness. He testified confidently and with detailed recollection of his communications with Czaja throughout.
[8] Despite taking this initial position as to relevance during communications with the Union, Respondents concede in their brief that information relating to non-unit nurses was relevant. Further, Respondents appear to have abandoned arguments regarding confidentiality issues with respect to the non-unit nurses.

On June 21, Snyder emailed a response to Czaja on behalf of the Union. Stating that the Union did not consider its RFI satisfied, Snyder articulated the Union's arguments for the necessity and relevance of the requested information. Snyder's email reiterated the Union's belief that Respondents maintained records of the corrective actions for NUHW represented employees, and that these records were necessary and relevant to assess whether Respondents' alleged failure to enforce its credential renewal notification policy was unique to Marie's case.

Snyder further argued for the necessity and relevance of the Union's request for the corrective action records for RNs not represented by the Union, claiming that because the vast majority of Respondents' RNs are not represented by the Union, these records are necessary to determine the uniformity of Respondents' credentialing notification policy enforcement among all of its RNs.

As for the Union's manager corrective action documentation request, Snyder stated that information regarding Respondents' treatment of the managers involved with Marie's case was also needed to determine "equal enforcement/application of employer policy" and is relevant to the Union's just cause inquiry. Snyder also reiterated the Union's request for Respondents' own "notes and interview questionnaire from the meetings preceding Tarina's termination" as necessary to the Union's assessment of the fairness and thoroughness of the investigation that resulted in Marie's termination.

Aside from a brief exchange between Czaja and Snyder later that same day regarding the logistics of Snyder picking up the Corrective Action Level V document, the parties did not communicate again until July 18, when Snyder emailed Czaja asking for Respondents' position on the outstanding RFI in light of Snyder's previous email. Czaja's same-day response to Snyder stated only "[p]lease see my previous response" regarding Respondents' stance on the RFI.

Snyder and Czaja exchanged several emails from July 18-26, including an email from Snyder asking for confirmation that Respondents were refusing to provide items 1, 2, 3, 4, 8, and 9 from the RFI. Czaja's response on July 26 reiterated Respondents' refusal to provide requests 1-3 due to a lack of necessity and relevance, while further elaborating that Respondents does not maintain its records in a manner that allows it to physically produce the requested corrective action documents in requests 1 and 2. Czaja's email further reiterated Respondents' stance that the Corrective Action Level V document satisfied the Union's request for all corrective action notes related to Marie's termination.

After this exchange of emails in July, the parties then did not communicate again until an October 17 email from Czaja to Synder stating that Respondents did not possess any managerial notes related to the investigation of Marie. However, for the first time, Czaja attached to this email his own notes related to the investigation.

In response, in what would be the final communication between the parties, Snyder responded the following day, expressing the Union's understanding that Respondents were refusing to comply with the RFI based on the proffered reasons in Czaja's July 26 email, and not that Respondents were still searching their records.

Snyder also acknowledged that Czaja's attached notes were responsive to the Union's request for all corrective action notes related to Marie's investigation, and Snyder again asked when the Union would receive the remaining information from its RFI. It is undisputed that Respondents did not provide documents responsive to any of the Union's information requests

which began on April 17, 2018, until Czaja attached his notes from Marie's corrective action investigation to his October 17, 2018 email to Snyder.

At trial, Czaja testified that Respondents are subject to audit by government entities, including the Department of Mental Health and the Joint Commission on Healthcare, Accreditation of Healthcare Organizations, and several others. Those audits can be announced or unannounced, and the primary thing they look for is whether employees who are required to have a certification, license or registration, that those are up to date and have been maintained. He explained that the information available includes both whether a license is up to date, and whether there have been any gaps.

Czaja also testified that Respondents are required to report to Medicare and/or Medicaid any instances where employees have worked without a license, because those entities require licensure, and Respondents have to return the money for any services provided without a license. Although he stated that it is a very infrequent occurrence that an employee would work without a license, he also confirmed not only that Respondents have reported such occasions, but that among the many things he does, he facilitates that information being generated and handed off to the department which does the reporting.

Unlike Land-Ariizumi and Snyder, I did not find Czaja to be a credible witness. He frequently parsed words, and was evasive in response to simple questions. For example, his repeated characterization that Respondents "don't have" certain responsive documents was revealed not to be true. When pressed, he revealed that "don't have" was "not technically accurate … I just don't know where it would be." (Tr. 210). I further find his explanation for not initially providing his notes from the Marie investigation to be similarly not credible.

Respondents' other witness, senior labor relations representative James Busalacchi, Jr. had by his own description only a "vague recollection" of the RFI in this case, and I give little weight to his testimony. To the extent he had a general recollection of involvement in this matter, his testimony was that Respondents don't give information about non-unit discipline, and that the responses given to the Union's RFI were typical of what he would advise.

ANALYSIS

The Supreme Court has long held that an employer must provide a union, on request, with relevant information that is necessary for the proper performance of its duties as the exclusive bargaining representative. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 153 (1956). Indeed, the Supreme Court has held that an employer's duty to bargain collectively extends beyond periodic contract negotiations and includes its obligation to furnish information that allows a union to decide whether to process a grievance under an existing contract. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967).[9]

> "A labor organization's right to information exists not only for the purpose of negotiating a collective-bargaining agreement, but also for the proper administration of an existing contract, including the bargaining required to resolve employee grievances." *Southern California Gas Co.*, 344 NLRB 231, 235 (2005) (*citing Hobelmann Port Services*, 317 NLRB 279 (1995); *Westinghouse Electric Corp.*, 239 NLRB 106, 107 (1978).

[9] This is often referred to as "policing the contract." See, e.g., *United Graphics, Inc.*, 281 NLRB 463, 465 (1986).

Accordingly, the Board has long held that Section 8(a)(5) of the Act obligates an employer to furnish requested information which is potentially relevant to the processing of grievances. "An actual grievance need not be pending nor must the requested information clearly dispose of the grievance." *United Technologies Corp.*, 274 NLRB 504 (1985). However, if there does exist a pending grievance, "an employer's duty to furnish information relevant to the processing of a grievance does not terminate when the grievance is taken to arbitration." *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1353 (2010).

Information requests regarding bargaining unit employees' terms and conditions of employment are "presumptively relevant" and must be provided. *Whitesell Corp*., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011). There is no burden on the part of the Union to prove the relevance of or explain the need for this type of presumptively relevant information.

By contrast, where the requested information is not directly related to the bargaining unit, the information is not presumptively relevant, and the requesting party does have the burden of establishing the relevance of the requested material. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Earthgrains Co.*, 349 NLRB 389 (2007). Even in those situations where a showing of relevance is required, whether because the presumption has been rebutted or because the information requested concerns non-unit matters, the standard for establishing relevancy is the liberal, "discovery-type standard." *Caldwell Mfg. Co.*, 346 NLRB 1159, 1160 (2006).

Finally, once relevance is established, the burden is on an employer to provide an adequate explanation or valid defense to its failure to provide the information in a timely manner. *Woodland Clinic*, supra, *Coca-Cola Bottling Co.*, 311 NLRB 424, 425 (1993).

1. The information sought by the Union in Request #1 was presumptively relevant.

Based on my review of the Union's requests, I find that request #1 ("All corrective action cases involving NUHW members who have worked on an expired license") relates directly to terms and conditions of employment of unit employees and/or represented by the Union. As such, the information is presumptively relevant, and the Act requires that it be furnished without the need for the Union to establish relevance.

Respondents do not address the Board's "presumptively relevant" standard, nor dispute the relevance of the requested information. Instead, Respondents argue that the information in request #1 could not be produced because those records are not maintained in such a fashion as to be able to respond to the Union's request. Respondents do not cite to any case supporting this specific assertion as a justification for the failure to provide presumptively relevant information, but it is arguably analogous to a defense that complying with the request would be unduly burdensome.

Where requested information is otherwise relevant, "the onus is on the employer to show that production of the data would be unduly burdensome." *Mission Foods*, 345 NLRB 788, 789 (2005). It is not enough to merely assert that production of information is unduly burdensome in the absence of supporting evidence. See *Control Services, Inc.,* 315 NLRB 431, 451, 457 (1994). Here, I do not find merit to this defense, as Respondents have not shown that this request would have been unduly burdensome.

Czaja testified that Respondents are required to report any instances where employees have worked without a license, and that Respondents have gathered and reported that information, as required by Medicare/Medicaid and as monitored by multiple state agencies. Therefore, these instances are clearly known to Respondents, and would be readily accessible. Indeed, Czaja characterized employees working without a license as "a very infrequent occurrence." (Tr. 214).

It would be a very simple matter for Respondents to confirm in which of those "very infrequent occurrence[s]" when employees worked without a license – instances which Respondents are required to and do report - whether the employee at issue received any corrective action, and to provide that presumptively relevant information to the Union. Respondents have provided no evidence to suggest otherwise, nor any other compelling reason why this information could not be provided.

Accordingly, because the information sought by the Union in its request #1 was presumptively relevant, and that presumption has not been rebutted, I find that Respondents violated Section 8(a)(5) and (1) of the Act when, since about April 17, 2018, Respondents failed or refused to provide the Union with this presumptively relevant information.

2. The information sought by the Union in Request #2 was not presumptively relevant, but the General Counsel has demonstrated its relevance.

The Union's request #2 ("All corrective action cases involving UNAC or other nursing union members who have worked on an expired license") seeks the same type of information as its request #1, but regarding non-unit employees. Unlike the presumptive relevance of information regarding bargaining unit employees' terms and conditions of employment, the relevance of non-unit information is not presumed but must be shown. To be entitled to this information, the General Counsel must present evidence that either: (a) the Union demonstrated relevance of non-unit information or (b) the relevance of the information should have been apparent to the Respondents under the circumstances. See *Disneyland Park*, 350 N.L.R.B. 1256, 1258, (2007).

The relevance burden is a broad, discovery type standard, requiring a union to demonstrate only "more than a mere suspicion of the matter for which information is sought." This burden is satisfied by demonstrating a reasonable belief for requesting the information, supported by objective evidence, including seeking the information to investigate the possible filing of a grievance. *Racetrack Food Services, Inc.*, 353 NLRB 687, 699 (2008); *Brazos Electric Power Cooperative, Inc.*, 241 NLRB 1016 (1979).

An employer may not refuse to furnish non-unit requested information solely on the basis that it concerns matters outside the scope of the bargaining unit represented by the Union. NLRB v. Acme Industrial, 385 U.S. 432, 435-436 (1967). For example, the Board has held that wage rates and recent percentage wage increase information for non-unit employees are relevant to the legitimate need of a union to make an informed appraisal of an outstanding grievance regarding possible wage-parity bargaining agreement violations committed by an employer for unit employees. *Brazos Electric, supra*, 241 NLRB at 1018-1019.

Here, the Union made clear to Respondents that non-unit RNs' licensing renewal-related discipline records are necessary to evaluate the equal enforcement/application of Respondents' Policy, which is part of the investigative process of its filed grievance. As such, I find that the Union did meet the "broad, discovery type standard" required for non-bargaining unit information

requests. Indeed, Respondents concede that this information relating to the non-unit employees was relevant.

As with the unit information, where requested non-unit information is otherwise relevant, "the onus is on the employer to show that production of the data would be unduly burdensome." *Mission Foods, supra*, 345 NLRB at 789, and it is not enough to merely assert that production of information is unduly burdensome in the absence of supporting evidence. *Control Services, Inc., supra.,* 315 NLRB at 451, 457. Again, I find that Respondents have not shown that this request would have been unduly burdensome.

Just as with its unit employees, it would be a very simple matter for Respondents to confirm those "very infrequent occurrence[s]" when non-unit employees worked without a license – instances which Respondents are required to and do report - whether the employee at issue received any corrective action, and to provide that information to the Union. And as with the unit information, Respondents have provided no evidence to suggest otherwise, nor any other reason why this information could not be provided.

Therefore, because the General Counsel has demonstrated the relevance of the information requested, which Respondents have failed and refused to provide, I find Respondents violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with the information sought in its request #2.

3. The information sought by the Union in Request #3 was not presumptively relevant, and the General Counsel has not demonstrated its relevance.

The General Counsel alleges that Respondents violated Section 8(a)(5) and (1) of the Act by failing and/or refusing to provide the Union with corrective/disciplinary action documentation for any managers related to Marie's case, notwithstanding that managers are excluded from the unit represented by the Union.

In this instance, I am not persuaded by the General Counsel's argument. I find that employees and management are subject to two different provisions of the Policy with different language and rationale regarding discipline. Specifically, employee discipline for working with an expired license is governed by the Policy's sub-provision 5.3.3 ("the employee is terminated"); while management discipline for allowing a subordinate to work with an expired license is governed by sub-provision 5.3.4 ("will be subject to corrective action/disciplinary action, up to and including termination"), an entirely separate basis for discipline.

Unlike the analysis above regarding the relevance of discipline for non-unit employees who have engaged in the same conduct as Marie, the General Counsel has failed to show the relevance of management discipline related to Marie's case to its grievance investigation of equal enforcement of employer policy. Whether or how a manager was disciplined for violating a separate employer policy has no bearing on whether the discipline enforced against Marie was for good cause.

If the Union's request were for prior discipline information relating to a manager's own failure to maintain the same required license as rank-and-file employees, my conclusion would be different.[10] That information would be relevant. But, here the Union seeks information

[10] Managers are in fact subject to the same licensure requirements, but there is no assertion here that any manager worked w/out a valid license.

related to manager discipline that is only tangentially related to the discipline at issue. I do not find that category of information to be sufficiently related to Marie's disputed discipline to require Respondents to produce it.

Therefore, because the information requested was not presumptively relevant, and the General Counsel has failed to demonstrate that the Union is otherwise entitled to the information, I find Respondents did not violate Section 8(a)(5) and (1) of the Act by refusing to provide that information.

4. Respondents unreasonably delayed in furnishing the Union with the information sought in Request #4, which was presumptively relevant.

As for the information in request #4 ("All corrective action notes relating to Tarina Marie"), this information clearly relates directly to terms and conditions of employment of a unit employee, and as such, the information is presumptively relevant. Therefore, the Act requires that it be furnished without the need for the Union to establish relevance, and Respondent does not dispute the relevance of this information.

Instead, Respondents argue that the information it provided on October 17 – Czaja's notes from the investigation of Marie's correction action – fully satisfied their obligation.[11] Respondents acknowledge that prior to that October 17 date, no documents were provided in response to this or any of the Union's requests, and Respondents do not dispute that Czaja's notes were available to be turned over long before six months had transpired since the Union's initial request.

The failure to *timely* provide relevant information requested is a separate 8(a)(5) violation of the Act. An employer must timely respond to a union's request seeking relevant information even when the employer believes it has grounds for not providing the information. *Regency Service Carts*, 345 NLRB 671, 673 (2005) ("When a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information will not be furnished"); *Kroger Co.*, 226 NLRB 512, 513–514 (1976). Absent evidence justifying an employer's delay in furnishing such information, such a delay is violative of the Act.

Because I have found that the Union was entitled to this information at the time it made its initial request, it was the employer's duty to furnish it as promptly as possible. *Monmouth Care Center*, 354 NLRB 11, 41 (2009); *Woodland Clinic*, 331 NLRB 735, 737 (2000). Here, I find that six months was an unreasonable delay in furnishing such information, which constitutes as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all. *Monmouth Care*, supra; *Woodland Clinic*, supra; *Valley Inventory Service*, 295 NLRB 1163, 1166 (1989).

In addition, based on the factors that are considered in evaluating whether Respondents exhibited a reasonable good-faith effort to respond to the information requests, I find that Respondents' arguments fail. It is clear that Respondents' actions, given the totality of the circumstances, do not meet the definition of reasonable promptness as set forth in *West Penn Power Co.* and see *Allegheny Power*, 339 NLRB 585 (2003) (factors to consider in assessing

[11] The General Counsel amended its complaint at the hearing to acknowledge receipt of these documents from Respondents, but to allege that Respondents violated Section 8(a)(5) and (1) of the Act because the Respondents' delay in providing the information was unreasonable.

the promptness of the response are complexity and extent of the requested information, its availability, and difficulty in accessing the information.)

Respondents' witnesses did not testify, nor is it otherwise apparent, that the Union's request for this particular information was in any way complex or voluminous, or that it was unavailable or difficult to access. Rather, Respondents maintain that Czaja – a senior human resources professional, with 28 years of experience - did not understand that the Union's request for "corrective action notes" would encompass Czaja's own notes from the investigation relating to Marie's corrective action. I do not find this to be credible.

The response that ultimately was made came 6 months and a day after the Union's initial request for information. I find that this clearly constitutes an unreasonable delay. *Regency Service Carts, Inc.*, 345 NLRB 671, 674 (2005) (the Board found a 16-weeks delay in providing information unreasonable); *Bundy Corp.*, 292 NLRB 671 (1989) (the Board found a 6-weeks delay in providing information unreasonable); *Woodland Clinic*, 331 NLRB 735, 737 (2000) (the Board found a 7-weeks delay in furnishing information unreasonable); *Postal Service*, 332 NLRB 635 (2000) (the Board found that a 5-weeks delay in furnishing information unreasonable).

For the reasons discussed above, Respondents had no reasonable basis for delaying the furnishing of the requested information. I find that the delay was just an extension of its other refusals to provide documents to the Union. Accordingly, I find Respondents' delay in providing what limited response it did to the Union's request for information was unreasonable and thus violates Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Respondents, Kaiser Foundation Hospitals and Southern California Permanente Medical Group, are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, National Union of Healthcare Workers, is a labor organization within the meaning of Section 2(5) of the Act and represents a bargaining unit comprised of workers employed by the Respondents.

3. Since on or about April 17, 2018, Respondents have committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union by failing and refusing to furnish it with information it requested on April 17, 2018, and again on June 21, 2018, that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of Respondents' unit employees.

4. Since on or about April 17, 2018, Respondents have violated Section 8(a)(5) and (1) of the Act by its unreasonable delay in providing the Union with relevant and necessary information the Union requested.

5. The Respondents' above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondents have engaged in conduct in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that they cease and desist from engaging in such conduct and take certain affirmative action designed to effectuate the policies of the Act.

In particular, I shall recommend that, to the extent they have not already done so, Respondents shall timely furnish the following information to the Union: all of the information in #1, #2 and #4 of the Union's April 17 and June 21, 2018 information requests.

I shall also recommend that Respondents be required to notify its employees that the Union is entitled to request and receive information related to its role as collective-bargaining representative, and Respondents will not withhold from, nor unreasonably delay providing to, the Union information which the Union is lawfully entitled to request and receive.

Therefore, Respondents will be ordered to post and communicate by electronic post to employees the attached Appendix and Notice. On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

Respondents, Kaiser Foundation Hospitals and Southern California Permanente Medical Group, its officers, agents, and representatives, shall

1. Cease and desist from

   (a) Refusing to bargain collectively with the National Union of Healthcare Workers (the Union) by failing and refusing to furnish and/or unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondents' unit employees at its Downey, California facility.

   (b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

   (a) To the extent it has not already done so, furnish to the Union in a timely manner the information requested by the Union in #1, #2 and #4 of its April 17, 2018 and June 21, 2018 information requests.

   (b) Within 14 days after service by the Region, post at its Downey, California location copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

provided by the Regional Director for Region 21 after being signed by Respondents' authorized representative, shall be posted by Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if Respondents customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondents have gone out of business or closed the facility involved in these proceedings, Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondents at any time since April 17, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondents have taken to comply.

Dated, Washington, D.C August 1, 2019

Jeffrey P. Gardner
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT refuse to bargain collectively and in good faith with the Union, National Union of Healthcare Workers, by failing and refusing to furnish it with requested information in a timely manner that is relevant and necessary to the Union's performance of its duties as your collective-bargaining representative.

WE WILL NOT unreasonably delay in providing the Union with information that is relevant and necessary to the Union's performance of its duties as your collective-bargaining representative.

WE WILL NOT in any like or related manner fail and refuse to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of our employees in the Unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL furnish to the Union in a timely manner the information it requested in its April 17, 2018, and June 21, 2018 information requests, including:

1. All corrective-action cases involving NUHW members who have worked on an expired license.

2. All corrective-action cases involving UNAC (United Nurses Association of California) or other nursing union members who have worked on an expired license.

Kaiser Foundation Hospitals
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below:

U.S. Courthouse-Spring Street, 312 N. Spring Street, Suite 10150, Los Angeles, CA 90012
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.
You may also obtain information from the Board's website: www.nlrb.gov.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/21-CA-224219 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (213) 634-6502.